

1954

March 5

Mr. Newell Brown, Director
Division of Employment Security
Department of Labor
32-34 So. Main Street
Concord, New Hampshire

Dear Mr. Brown:

This is in response to your letter of February 12, in which you asked whether unremunerated corporate officers performing services connected with the actual conduct of the corporate business (as distinguished from official functions of a purely ceremonial and formal nature required only for the maintenance of the corporate structure) are in employment within the meaning of chapter 218 of the Revised Laws. It is the opinion of this office that such officers are not in employment.

The applicable provisions of the statute are as follows:

"Employer" means . . . any employing unit which in each of twenty different weeks, whether or not such weeks are or were consecutive, within either the current or the preceding calendar year, has or had in employment, four or more individuals, irrespective of whether the same individuals are or were employed in each such week;" (R.L. c. 218, s. 1-H(1))

"Employment" Subject to the other provisions of this subsection means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied . . ." (R.L. c. 218, s. 1-I(1), as amended by c. 185, s. 3 of the Laws of 1949.)

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In order to be considered as being "in employment" these officers must perform service for "wages" or under a "contract of hire". Since no wages are paid to these officers we need only concern ourselves with the question of whether or not the services are performed under a "contract of hire".

The word "hire" is defined as follows in Webster's New International Dictionary (2d Ed.):

"The price, reward or compensation paid or contracted to be paid, for the temporary use of a thing or a place, for personal services or for labor, pay."

403 in an interpretation of a similar provision in the Illinois Unemployment Compensation Act, but not involving corporate officers the court stated:

"We have held that a contract of hire means to engage or purchase the labor or services of anyone for compensation or wages, as to hire a servant, agent or advocate."

Miller Auto Co. v. Unemployment Commission (1944) 132 N.J.L. 34 involved the question of whether the vice president of a corporation performing the sole function of signing checks and notes was an employee within the meaning of a statute using the expression contract for hire. The Court stated:

"The element of price or reward is inherent in the word 'hire'. A contract of hire, therefore, would be a most unusual undertaking if it did not involve something by way of recompense, and we think that no such unusual use of words was intended by the legislature in this instance."

Since the corporate officers in question receive no remuneration it is difficult to conceive how they can be considered as performing services under a "contract of hire".

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We are aware of the fact that a prior letter written by this office reached a contrary conclusion, but after serious and extended consideration it is the unanimous opinion of this office that the officers in question are not "in employment" within the meaning of the statute.

Very truly yours,

Louis C. Wyman
Attorney General